

MICHAEL CHAIT
MONTGOMERY SCARP & CHAIT PLLC
17600 VASHON HWY SW SUITE 105
PO BOX 1977
VASHON, WA 98070
(206) 625-1801

ASHLEY M. BENNETT EWALD*
AARON M. WAIS*
LEE B. BENNIN*
80 SOUTH EIGHT ST.
500 IDS CENTER
MINNEAPOLIS, MN 55402
(612) 632-3000
**PRO HAC VICE APPLICATION FORTHCOMING*

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

DOCTOR DANIELLE LLC,
Plaintiff,
v.
MARYRUTH ORGANICS, LLC,
Defendant.
and
MRO MARYRUTH, LLC,
Counterclaim Plaintiff,
v.
DOCTOR DANIELLE LLC,
Counterclaim Defendant.

No. 2:22-CV-00006-SAB

**DEFENDANT'S ANSWER TO
COMPLAINT, AFFIRMATIVE
DEFENSES, AND
COUNTERCLAIM PLAINTIFF'S
COUNTERCLAIMS**

JURY TRIAL DEMANDED

1 Defendant MaryRuth Organics, LLC (“MaryRuth Organics), by and through
2 its counsel, hereby responds to Plaintiff Doctor Danielle LLC’s (“Doctor Danielle”)
3 Complaint as follows. Unless specifically admitted, all allegations in the Complaint
4 are denied.

5 **PARTIES**

6 1. MaryRuth Organics lacks knowledge or information sufficient to form
7 a belief as to the truth of the allegations in paragraph 1, and on that basis denies those
8 allegations.

9 2. MaryRuth Organics admits the allegations in paragraph 2.

10 **JURISDICTION AND VENUE**

11 3. The allegations of paragraph 3 constitute legal conclusions to which no
12 response is required. To the extent any response is required, such allegations are
13 denied.

14 4. MaryRuth Organics denies the allegations in paragraph 4.

15 5. MaryRuth Organics denies the allegations in paragraph 5.

16 **FACTUAL ALLEGATIONS**

17 6. MaryRuth Organics lacks knowledge or information sufficient to form
18 a belief as to the truth of the allegations in paragraph 6, and on that basis denies those
19 allegations.

1 7. MaryRuth Organics lacks knowledge or information sufficient to form
2 a belief as to the truth of the allegations in paragraph 7, and on that basis denies those
3 allegations.

4 8. MaryRuth Organics lacks knowledge or information sufficient to form
5 a belief as to the truth of the allegations in paragraph 8, and on that basis denies those
6 allegations.

7 9. MaryRuth Organics lacks knowledge or information sufficient to form
8 a belief as to the truth of the allegations in paragraph 9, and on that basis denies those
9 allegations.

10 10. MaryRuth Organics lacks knowledge or information sufficient to form
11 a belief as to the truth of the allegations in paragraph 10, and on that basis denies
12 those allegations.

13 11. MaryRuth Organics admits that it sells nutritional supplements under
14 its MARYRUTH'S trademark; it was co-founded by MaryRuth Ghiyam; Ms.
15 Ghiyam is a certified health educator, nutritional consultant, and culinary chef; and
16 it adopted the logo depicted in paragraph 11 in 2018. MaryRuth Organics denies the
17 remaining allegations in paragraph 11.

18 12. MaryRuth Organics admits that its counsel contacted Doctor Danielle,
19 which communication speaks for itself. To the extent any response is required to the
20 remainder of paragraph 12, such allegations are denied.

1 13. MaryRuth Organics admits the allegations in paragraph 13.

2 14. MaryRuth Organics admits that an employee of its counsel placed an
3 order with Doctor Danielle. MaryRuth Organics lacks knowledge or information
4 sufficient to form a belief as to the truth of the remaining allegations in paragraph
5 14, and on that basis denies those allegations.

6 15. The allegations in paragraph 15 constitute legal conclusions to which
7 no response is required. To the extent any response is required, such allegations are
8 denied.

9 **CAUSE OF ACTION**

10 **Declaratory Judgment**

11 16. MaryRuth Organics hereby restates and reincorporates by reference its
12 responses to the allegations set forth in paragraphs 1 through 15 of the Complaint as
13 if fully set forth herein.

14 17. The allegations in paragraph 17 constitute legal conclusions to which
15 no response is required. To the extent any response is required, such allegations are
16 denied.

17 18. MaryRuth Organics lacks knowledge or information sufficient to form
18 a belief as to the truth of the allegations in paragraph 18, and on that basis denies
19 those allegations.

1 19. MaryRuth Organics admits that its position, in part, is that Doctor
2 Danielle is infringing its successor company's, MRO MaryRuth, LLC's, trademark
3 and trade dress rights. To the extent any response is required to the remainder of
4 paragraph 19, such allegations are denied.

5 20. MaryRuth Organics denies the allegations in paragraph 20.

6 21. MaryRuth Organics denies the allegations in paragraph 21.

7 22. The allegations in paragraph 22 refer to statements made by MaryRuth
8 Organics' counsel in its prior communication with Doctor Danielle, which
9 communication speaks for itself. To the extent a response is required to the
10 remainder of paragraph 22, such allegations are denied.

11 23. The allegations in paragraph 23 constitute legal conclusions to which
12 no response is required. To the extent any response is required, such allegations are
13 denied.

14 24. MaryRuth Organics denies the allegations in paragraph 24.

15 **AFFIRMATIVE AND OTHER DEFENSES**

16 **First Defense**

17 Doctor Danielle's Complaint fails to state a claim against MaryRuth Organics
18 upon which relief can be granted.

1 **Second Defense**

2 Doctor Danielle is barred from pursuing its claim in this District because
3 venue is improper.

4 **Third Defense**

5 This Court lacks personal jurisdiction over MaryRuth Organics.

6 **Fourth Defense**

7 Doctor Danielle is barred from pursuing its claim due to unclean hands.

8 **Fifth Defense**

9 Even if Doctor Danielle prevails in its claim, there is no legal basis for an
10 award of its attorneys' fees and costs.

11 MaryRuth Organics reserves the right to add additional affirmative defenses
12 as additional facts are learned during the course of the action.

13 **COUNTERCLAIMS**

14 Counterclaim Plaintiff MRO MaryRuth, LLC ("MaryRuth's"), by and
15 through its counsel, for its Counterclaims against Counterclaim Defendant Doctor
16 Danielle LLC ("Doctor Danielle"), allege as follows:

17 **PRELIMINARY STATEMENT**

18 1. MaryRuth's is a family-owned business that delivers nationally a wide
19 variety of wholesome supplements made from non-GMO, plant-based, vegan
20 ingredients. Its founder, MaryRuth Ghiyam, is a certified health educator, nutritional

1 consultant, and culinary chef. MaryRuth's takes pride in its products, and its
2 dedication to quality and customer satisfaction have garnered the attention of several
3 publications and earned MaryRuth's an excellent reputation among consumers.

4 2. MaryRuth's owns protectable trademark and trade dress rights in its
5 labels and packaging. MaryRuth's has spent considerable resources developing the
6 look and feel of its product packaging and its website to enable customers to identify
7 MaryRuth's products clearly and easily, and to distinguish them from those of
8 competitors.

9 3. MaryRuth's brings these claims against Doctor Danielle for federal,
10 state, and common law trademark infringement, trade dress infringement, and unfair
11 competition. In late 2021, Doctor Danielle changed its logo, look, and feel to mimic
12 MaryRuth's protectable trademark and trade dress in order to confuse consumers
13 and profit from MaryRuth's longstanding and hard-earned goodwill.

14 4. There is no confusion about Doctor Danielle's improper motives.
15 Months ago, MaryRuth's tried to resolve its concerns over Doctor Danielle's
16 infringement outside of court by having its counsel send a cease-and-desist-letter,
17 which Doctor Danielle received. But rather than engage in meaningful discussions
18 about a possible resolution, Doctor Danielle played games by admittedly turning a
19 blind eye and not responding and going so far as to delete comments to its social
20 media accounts that noted the similarities between Doctor Danielle's logo and trade

1 dress and MaryRuth's. It was only after it suspected that a lawsuit was imminent that
2 Doctor Danielle forum-shopped by rushing into this Court by means of its
3 declaratory relief action.

4 **PARTIES**

5 5. Counterclaim Plaintiff MRO MaryRuth is a limited liability company
6 organized and existing under the laws of the state of Delaware, having a principal
7 place of business at 1171 S Robertson Blvd #148, Los Angeles, California 90035.

8 6. Plaintiff and Counterclaim Defendant Doctor Danielle LLC ("Doctor
9 Danielle") is a limited liability company organized and existing under the laws of
10 the state of Washington, having a principal place of business at 30 Raven Lane,
11 Manson, Washington 98831.

12 **JURISDICTION AND VENUE**

13 7. These counterclaims arise under the Lanham Act, 15 U.S.C. § 1051 *et*
14 *seq.* This Court has federal question jurisdiction over these claims under 15 U.S.C.
15 § 1121 (action arising under the Lanham Act); 28 U.S.C. § 1331 (federal question);
16 28 U.S.C. § 1338(a) (any Act of Congress relating to trademarks); and 28 U.S.C.
17 § 1338(b) (action asserting claim of unfair competition joined with a substantial and
18 related claim under the trademark laws).

19 8. This Court has jurisdiction over the state-law claims in this action under
20 28 U.S.C. § 1367(a) because the state-law claims are so related to the federal claims

1 that they form part of the same case or controversy and derive from a common
2 nucleus of operative facts.

3 9. Without admitting that MaryRuth's is subject to the personal
4 jurisdiction of this Court, MaryRuth's states that this Court has personal jurisdiction
5 over Doctor Danielle because it is a Washington limited liability company with a
6 principal place of business in Manson, Washington and does business in the state.

7 10. In the event that MaryRuth's is subject to the personal jurisdiction of
8 this Court, venue is proper in this District under 28 U.S.C. §§ 1391(b) and 1391(c).

9 **FACTUAL BACKGROUND**

10 **I. MaryRuth's Founding and Evolution to a Leading Provider of Health**
11 **and Wellness Products.**

12 11. MaryRuth's cofounder, known as MaryRuth Ghiyam, is a certified
13 health educator, nutritional consultant, and culinary chef. Before 2014, Ms. Ghiyam
14 operated a private practice in New York City as a nutritional consultant, where she
15 met clients one-on-one to help them overcome their individual health challenges.
16 This often involved introducing clients to Ms. Ghiyam's "Liquids till Lunch"
17 concept, which later became the subject of her Wall Street Journal best-selling book,
18 *Liquids till Lunch: 12 Small Habits that will Change Your Life for Good*. The
19 Liquids till Lunch concept resonated strongly with clients.

20 12. Ms. Ghiyam's clients often reported they did not like taking capsule

1 vitamins due to the nausea it caused them. These client reports inspired Ms. Ghiyam
2 to create her first products: a raspberry-flavored Liquid Morning Multivitamin and
3 a coconut-flavored Liquid Nighttime Multimineral. Ms. Ghiyam began selling these
4 products out of her office and on Amazon.com, quickly earning glowing reviews
5 and a reputation of quality. These liquid multivitamins remain bestsellers among
6 MaryRuth's growing catalog of product offerings.

7 13. The success of Ms. Ghiyam's early products helped her realize she was
8 uniquely positioned to fill a need in the supplement industry for safe and wholesome
9 liquid vitamins made from natural ingredients. So, inspired by her passion for
10 helping others conquer their health goals, Ms. Ghiyam launched MaryRuth's in 2014
11 with her mother.

12 14. MaryRuth's has always been a mission-oriented company dedicated to
13 fostering a holistic, healthy lifestyle. To that end, MaryRuth's produces its
14 supplements from natural, non-GMO, plant-based, vegan ingredients with as few
15 allergens as possible. These high standards ensure MaryRuth's supplements are of
16 the highest quality and result in tasty products that make customers excited to
17 embark on and continue their wellness journeys.

18 15. MaryRuth's originally developed and sold liquid vitamins, but quickly
19 expanded to other supplements. MaryRuth's now offers more than 120 different
20 products, including solid and liquid multivitamins, probiotics, sprays, drops, herbals,

1 enzyme capsules, gummies, creams, and scrubs. What started as a small passion
2 project has blossomed into an industry-leading company with more than 90
3 employees.

4 16. MaryRuth's products have achieved wide commercial success.
5 MaryRuth's sells its products nationally directly through its website,
6 www.maryruthorganics.com, as well as through online and brick-and-mortar
7 retailers like Target, Whole Foods Market, Amazon, Wal-Mart, eBay, and Urban
8 Outfitters.

9 17. MaryRuth's products have been prominently featured throughout the
10 media, including *Martha Stewart* magazine, *Vogue* magazine, *Women's Health*
11 magazine, *People* magazine, *Elle* magazine, *The Wall Street Journal*, *The Los*
12 *Angeles Times*, *The Drew Barrymore Show*, and numerous podcasts.

13 18. MaryRuth's successful cultivation of its brand is also evident from its
14 legion of devoted followers on social media websites like Instagram (nearly 400,000
15 followers), Facebook (over 100,000 followers across several community pages), and
16 others. MaryRuth's routinely posts on its social media accounts and expends vast
17 time and resources engaging consumers, further building consumer recognition and
18 goodwill in its marks and trade dress.

19 **II. MaryRuth's Protected Trademark and Trade Dress.**

20 19. MaryRuth's brand and image have been integral to its success. Until

1 2018, MaryRuth's products displayed a logo depicting red and white farmhouses,
2 rolling green farm fields, and a clear sky. A stylized version of Ms. Ghiyam's name
3 appeared above the logo, and a watercolor photograph of Ms. Ghiyam appeared to
4 the right of the logo.



5
6
7
8
9
10 20. In 2018, MaryRuth's updated its logo and labeling while keeping many
11 of the same central components. MaryRuth's updated logo features a metal stamp or
12 metal engraving stylized depiction of Ms. Ghiyam wearing a blue collared shirt with
13 smiling red lips and golden hair tied with a red ribbon, set in front of rolling green
14 farm fields, a blue sky with rolling white clouds, and a farmhouse. A true and
15 accurate depiction of MaryRuth's logo is below:



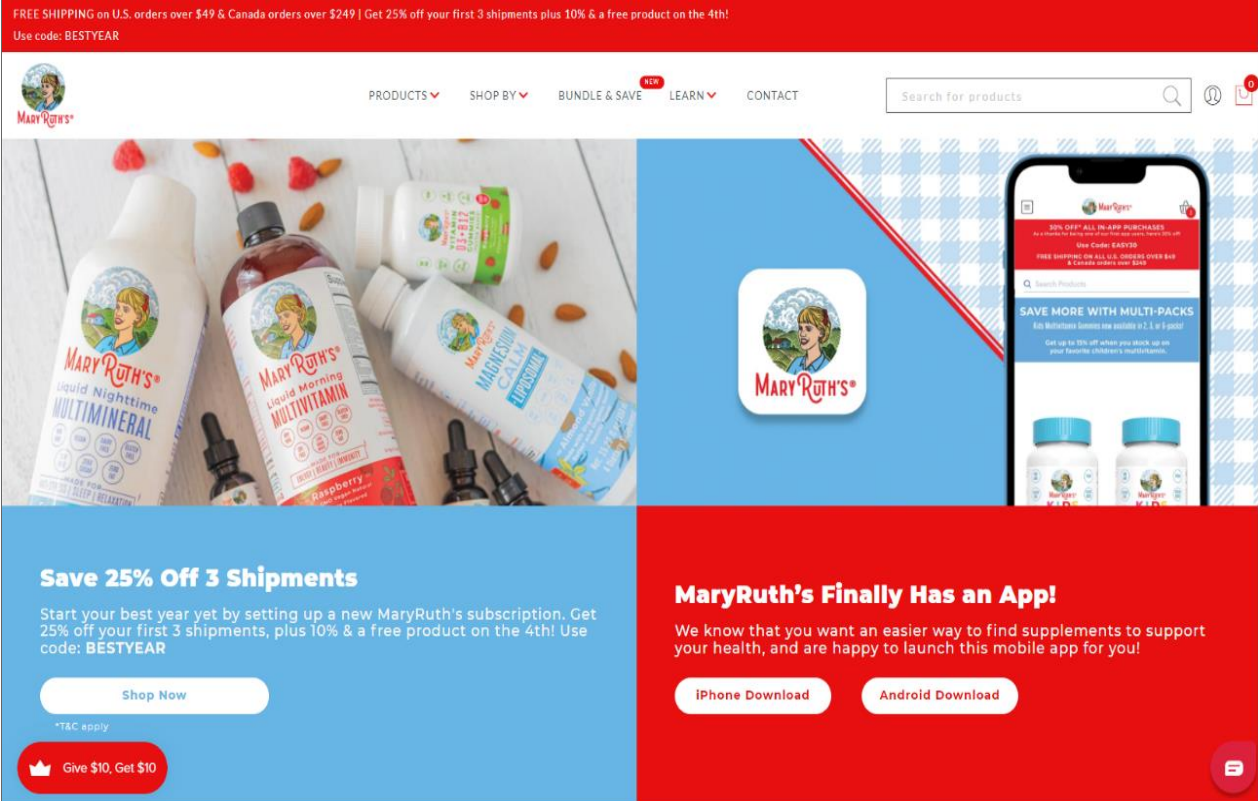
21. On June 8, 2021, MaryRuth Organics obtained a federal trademark registration for the updated logo, Registration No. 6,376,468 (“the MaryRuth’s Mark”). On September 28, 2021, MaryRuth Organics assigned all right, title, and interest in the MaryRuth’s Mark and other intellectual property to MRO MaryRuth, which currently owns it. A true and correct printout of information from the U.S. Patent and Trademark Office’s Trademark Status and Document Retrieval electronic database showing the current status and title of the MaryRuth’s Mark, along with its registration certificate, is attached as ***Defendant/Counterclaim Plaintiff’s Exhibit A***.

22. When it updated its logo in 2018, MaryRuth’s also updated the look,

1 feel, and appearance of its labels, packaging, and website. The new product labels
2 and packaging for MaryRuth's supplements consist of a white bottle with a white
3 label having the MaryRuth's Mark near the top of the label, a stylized version of
4 MaryRuth's name directly below the logo in tomato red pantone, the product name,
5 and a band of vibrant color along the bottom of the label that varies from product to
6 product. The label's text is written in a sans serif font and arranged in a way that is
7 easily readable. The content on MaryRuth's product labels is arranged with clean
8 lines, in symmetrical shapes, and with sharp edges. For example, the information on
9 the front face of the label is displayed in an overall rectangular shape, and the band
10 of vibrant color at the bottom of the label has a sharp border separating it from the
11 rest of the label. The labels also display six colored circles that are arranged in
12 symmetrical columns of three on each side of the MaryRuth's Mark. These colored
13 circles contain important information about the product, again written in sans serif
14 and colorful font. True and correct images of products displaying MaryRuth's
15 packaging and labels are below:



23. MaryRuth's website, www.maryruthorganics.com, carries the same look and feel as its product labels and packaging. Specifically, MaryRuth's website displays the MaryRuth's Mark on a white background at the top of the homepage under a tomato red ribbon displaying information about promotions and MaryRuth's free-shipping policy. The website uses the same vibrant colors that appear on MaryRuth's product labels and follows the same symmetrical layout with crisp corners and rectangular areas of color. The color and arrangement scheme are used throughout the entire MaryRuth's website. A true and accurate image of the home page of MaryRuth's website is below:



24. The features of MaryRuth's product packaging, labels, and website described in paragraphs 22 and 23 above, alone or in combination, and including the overall look, feel, and appearance of MaryRuth's packaging, labels, and website, are collectively referred to as "MaryRuth's Trade Dress."

25. MaryRuth's Trade Dress fosters a cohesive look and feel among MaryRuth's products and website. MaryRuth's Trade Dress has distinctive and non-functional features which identify to consumers that MaryRuth's is the origin of the specific product, thereby invoking the substantial goodwill with consumers that MaryRuth's has tirelessly worked to develop since its founding.

1 26. In late 2018 and into 2019, MaryRuth's began using the MaryRuth's
2 Mark and MaryRuth's Trade Dress and updating its product labels to include
3 MaryRuth's new look. By the end of 2019, all new MaryRuth's products displayed
4 the MaryRuth's Mark and MaryRuth's Trade Dress.

5 27. MaryRuth's continues to produce and sell products displaying the
6 MaryRuth's Mark and MaryRuth's Trade Dress to this day. Through years of
7 maintaining rigorous standards and careful cultivation of a brand dedicated to health,
8 wellness, and quality, including nearly three years of continuous and substantial use
9 of the MaryRuth's Mark and MaryRuth's Trade Dress, MaryRuth's has acquired
10 valuable goodwill and trust in its products.

11 **III. Doctor Danielle Rebrands Itself to Commandeer MaryRuth's Hard-**
12 **Earned Reputation and Goodwill with Consumers.**

13 28. On information and belief, Doctor Danielle was founded in 2013 by Dr.
14 Danielle Saunders as a business that makes and sells organic, vegan, and non-GMO
15 vitamins and supplements.

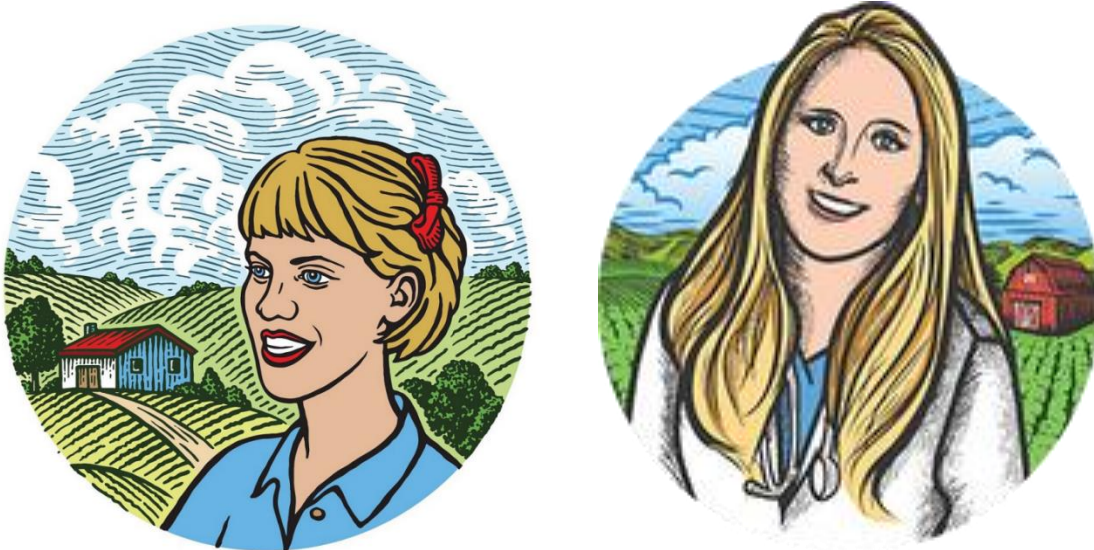
16 29. For nearly all its existence, Doctor Danielle highlighted the medical
17 background of its founder in its product packaging, labeling, website, and
18 advertising. For example, Doctor Danielle's product labels prominently featured the
19 words "Physician Formulated," a photograph of Dr. Saunders with a stethoscope
20 around her neck, a doctor-like signature that was presumably Dr. Saunders's, and a

reference to Dr. Saunders being a “Naturopathic Physician & Biochemist.” Doctor Danielle’s products also featured a stylized gray and orange cross similar to the cross symbol associated with the medical profession. Doctor Danielle’s products were typically sold in white bottles with labels, with green and orange text against a background of different shades of green. On information and belief, a true and accurate image of a Doctor Danielle product displaying these labeling features is below:



30. In late October of 2021, Doctor Danielle announced it was in the process of giving its brand a visual makeover by changing to a new logo and product packaging. Despite years of MaryRuth’s continuous use of the MaryRuth’s Mark

1 and MaryRuth's Trade Dress, the new look and feel of Doctor Danielle's products
2 and website closely mimics those of MaryRuth's. Most notably, for the first time,
3 Doctor Danielle's products and website began displaying a circular logo depicting a
4 metal-stamp or metal-engraving-style image of a smiling woman wearing a blue
5 shirt with golden hair in front of rolling green farm fields, a blue sky with rolling
6 white clouds, and a farmhouse. Doctor Danielle's logo bears a striking visual
7 resemblance to the MaryRuth's Mark. Doctor Danielle's logo is hereinafter referred
8 to as the "Infringing Logo." A side-by-side comparison of the MaryRuth's Mark
9 (left) and the Infringing Logo (right) is below:



10
11
12
13
14
15
16 31. Doctor Danielle does not have a federally registered trademark for the
17 Infringing Logo. On information and belief, Doctor Danielle has not applied for
18 federal registration of the Infringing Logo.

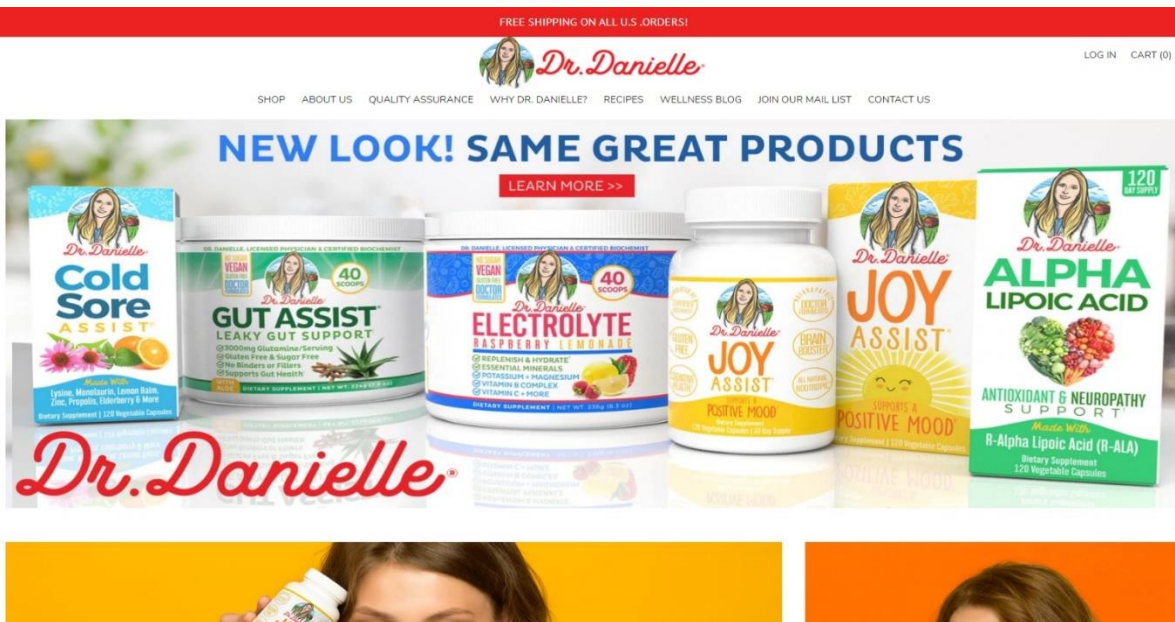
19 32. Doctor Danielle's rebranded product packaging, labeling, and website
20 mimic the overall look and feel of the MaryRuth's Trade Dress. Specifically, Doctor
21

Danielle's rebranded, non-liquid supplements are now sold in white bottles with a white label having the Infringing Logo near the top of the label, a stylized version of Doctor Danielle's name directly below the Infringing Logo in tomato red pantone, the product name, and a band of vibrant color along the bottom of the label. Like the MaryRuth's Trade Dress, Doctor Danielle's product labels have text written in a sans serif font and are arranged in a way that is easily readable. The content on Doctor Danielle's product labels is arranged with clean lines, in symmetrical shapes, and with sharp edges. The labels also have six colored circles arranged in symmetrical columns of three on each side of the Infringing Logo which contain information about the product written in sans serif and colorful font. True and correct images of products displaying Doctor Danielle's new appearance are below:



33. Doctor Danielle's website, www.drdanielle.com, reflects the new look

and feel of Doctor Danielle's new appearance. Like MaryRuth's website, Doctor Danielle's website features the Infringing Logo at the top of the page under a tomato red ribbon displaying information about Doctor Danielle's free-shipping policy. Doctor Danielle's website also uses vibrant colors with crisp corners and rectangular areas of color. A true and accurate image of the homepage of Doctor Danielle's updated website is below:



34. The features of Doctor Danielle's product packaging, labels, and website described in paragraphs 32 and 33 above, alone or in combination, and including the overall look, feel, and appearance of Doctor Danielle's packaging, labels, and website, are collectively referred to as the "Infringing Trade Dress."

35. For ease, the below chart presents a side-by-side comparison of several products displaying the Infringing Logo and Infringing Trade Dress that are confusingly similar to the MaryRuth's Mark and MaryRuth's Trade Dress. The chart

is exemplary, not all-inclusive:

<p>Doctor Danielle's</p> <p>Label</p> <p>Until Late-October</p> <p>2021</p>	<p>Doctor Danielle's</p> <p>Label</p> <p>Since Late-October</p> <p>2021</p>	<p>MaryRuth's Label</p>
		
		
		

Doctor Danielle's Label Until Late-October 2021	Doctor Danielle's Label Since Late-October 2021	MaryRuth's Label
		
		



36. For ease, a side-by-side comparison of MaryRuth's website and Doctor Danielle's website is included below:

FREE SHIPPING on U.S. orders over \$49 & Canada orders over \$249 | Get 25% off your first 3 shipments plus 10% & a free product on the 4th!
Use code: BESTYEAR

MaryRuth's

PRODUCTS SHOP BY BUNDLE & SAVE LEARN CONTACT

Search for products

Save 25% Off 3 Shipments

Start your best year yet by setting up a new MaryRuth's subscription. Get 25% off your first 3 shipments, plus 10% & a free product on the 4th! Use code: BESTYEAR

Shop Now

*T&C apply

Give \$10, Get \$10

MaryRuth's Finally Has an App!

We know that you want an easier way to find supplements to support your health, and are happy to launch this mobile app for you!

iPhone Download Android Download

FREE SHIPPING ON ALL U.S. ORDERS!


Dr. Danielle

LOG IN CART (0) Q



SHOP ABOUT US QUALITY ASSURANCE WHY DR. DANIELLE? RECIPES WELLNESS BLOG JOIN OUR MAIL LIST CONTACT US

NEW LOOK! SAME GREAT PRODUCTS

LEARN MORE >>



Dr. Danielle

IV. Doctor Danielle Has Sold and Continues to Sell Products Displaying the Infringing Logo and Infringing Trade Dress—Despite Receiving Notice of its Infringing Actions.

37. On information and belief, Doctor Danielle owns, manages, operates, or actively promotes the highly interactive commercial website located at www.drdanielle.com.

38. On information and belief, since its rebranding in October 2021, Doctor Danielle has used its website to direct and supervise the sales of products bearing the Infringing Logo and Infringing Trade Dress to consumers throughout the United States.

39. On information and belief, Doctor Danielle also sells products bearing the Infringing Logo and Infringing Trade Dress on Amazon.com and other online retailers.

40. MaryRuth's did not license or authorize Doctor Danielle to display or otherwise use the Infringing Logo or Infringing Trade Dress.

41. As a result of Doctor Danielle's activities related to the Infringing Logo and Infringing Trade Dress, there is a strong likelihood of confusing associations in the marketplace between the MaryRuth's Mark and MaryRuth's Trade Dress on one hand, and the Infringing Logo and Infringing Trade Dress on the other hand, that indicates consumer confusion and Doctor Danielle's misappropriation of

1 MaryRuth's hard-earned rights and substantial goodwill with consumers.

2 42. On November 23, 2021, MaryRuth's directed its counsel to send a
3 cease-and-desist letter to Doctor Danielle, which it did by email and FedEx with
4 delivery receipt explaining the Infringing Logo and Infringing Trade Dress are
5 "strikingly, and confusingly, similar to" the MaryRuth's Mark and MaryRuth's
6 Trade Dress. MaryRuth's demanded that Doctor Danielle "agree to change [its]
7 labels, packaging, and website substantially, such that there would be no likelihood
8 that consumers would be confused about the source of either party's products or
9 whether the parties are related." A true and correct copy of MaryRuth's cease-and-
10 desist letter is attached as Exhibit A to the Complaint in this case, ECF-1.

11 43. As Doctor Danielle admits in its complaint, it did not respond to the
12 cease-and-desist letter and, instead, continues to sell products displaying the
13 Infringing Logo and Infringing Trade Dress on its website, Amazon.com, and other
14 retail websites.

15 44. Doctor Danielle's past and ongoing use of the Infringing Logo
16 constitutes willful trademark infringement in violation of the Lanham Act and
17 Washington common law. Additionally, Doctor Danielle's past and ongoing use of
18 the Infringing Trade Dress constitutes willful trade dress infringement in violation
19 of the Lanham Act and Washington common law.

COUNT I

TRADEMARK INFRINGEMENT IN

VIOLATION OF 15 U.S.C. § 1114(a)

45. MaryRuth's repeats and realleges the allegations of paragraphs 1 through 44 above and incorporates those allegations herein by reference.

46. As a separate cause of action and ground for relief, MaryRuth's alleges that Doctor Danielle has been and is currently engaged in acts constituting infringement of the MaryRuth's Mark within the meaning of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1), through Doctor Danielle's use of the Infringing Logo in commerce for the sale, offering for sale, distribution, or advertisement of goods or services in a manner that creates a likelihood of confusion, mistake, or deception.

47. Doctor Danielle's infringing conduct is causing and is likely to cause injury to the public, and is causing and is likely to cause MaryRuth's irreparable injury. Doctor Danielle's infringing conduct has been intentional and willful, and manifests a deliberate and knowing disregard of MaryRuth's trademark and trade dress rights, making this an exceptional case. MaryRuth's is entitled to damages and injunctive relief pursuant to 15 U.S.C. §§ 1114, 1116, 1117, and 1118.

COUNT II

**TRADE DRESS INFRINGEMENT IN
VIOLATION OF 15 U.S.C. § 1125(a)**

48. MaryRuth's repeats and realleges the allegations of paragraphs 1 through 47 above and incorporates those allegations herein by reference.

49. As a separate cause of action and ground for relief, MaryRuth's alleges that Doctor Danielle offers to sell, sells, distributes, or advertises products displaying the Infringing Trade Dress in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), by infringing MaryRuth's rights in the MaryRuth's Trade Dress. Doctor Danielle's use of the MaryRuth's Trade Dress or colorable imitations thereof is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of Doctor Danielle with MaryRuth's and as to the origin, sponsorship, or approval of products displaying the Infringing Trade Dress.

50. The MaryRuth's Trade Dress is entitled to protection under the Lanham Act. The MaryRuth's Trade Dress uses unique, distinctive, and non-functional designs. MaryRuth's has extensively and continuously promoted and used the MaryRuth's Trade Dress for years in the United States. Through that extensive and continuous use, the MaryRuth's Trade Dress has become a well-known indicator of the origin and quality of MaryRuth's products. The MaryRuth's Trade Dress has also acquired substantial secondary meaning in the marketplace before Doctor

1 Danielle commenced its infringing use of the MaryRuth's Trade Dress and colorable
2 imitations thereof in connection with its infringing products.

3 51. Doctor Danielle's infringing use of the MaryRuth's Trade Dress and
4 colorable imitations thereof are likely to cause consumer confusion as to the origin,
5 sponsorship, or affiliation of Doctor Danielle's products, at least by causing the false
6 and misleading impression that Doctor Danielle's products are manufactured by,
7 authorized by, or otherwise associated with MaryRuth's.

8 52. Doctor Danielle's infringing use of the MaryRuth's Trade Dress and
9 colorable imitations thereof have caused and, unless enjoined, will continue to cause
10 substantial and irreparable injury to MaryRuth's for which MaryRuth's has no
11 adequate remedy at law, including at least substantial and irreparable injury to the
12 goodwill and reputation for quality associated with the MaryRuth's Trade Dress.

13 53. On information and belief, for at least the reasons set forth above,
14 Doctor Danielle's use of the MaryRuth's Trade Dress and colorable imitations
15 thereof has been intentional, willful, and malicious. Doctor Danielle's bad faith is
16 evidenced at least by the similarity of the Infringing Trade Dress to the MaryRuth's
17 Trade Dress, Doctor Danielle's continued disregard for MaryRuth's trade dress
18 rights even after receiving notice of its infringing actions, and the purposeful
19 deletion of comments indicating consumer confusion without modifying the
20 Infringing Trade Dress in a manner to no longer cause confusion.

COUNT IV

COMMON LAW TRADE DRESS INFRINGEMENT

58. MaryRuth's repeats and realleges the allegations of paragraphs 1 through 57 above and incorporates those allegations herein by reference.

59. As a separate cause of action and ground for relief, MaryRuth's alleges that it has protectable rights in the MaryRuth's Trade Dress under the common law of the State of Washington, Doctor Danielle has been and is currently engaged in acts constituting infringement of the MaryRuth's Trade Dress under the common law of the State of Washington and all states through its use of the Infringing Trade Dress in commerce in State of Washington and other states in the sale, offering for sale, distribution, or advertisement of goods or services in a manner that creates a likelihood of confusion, mistake, or deception in the minds of consumers.

60. Doctor Danielle's infringing conduct is causing and is likely to cause injury to the public, and is causing and is likely to cause MaryRuth's to suffer irreparable injury. MaryRuth's is entitled to damages and injunctive relief under the common law of the State of Washington and all states.

COUNT V

UNFAIR COMPETITION IN VIOLATION OF

RCW §§ 19.86.020 and 19.86.090, *et seq.*

61. MaryRuth's hereby repeats and realleges the allegations of paragraphs

1 1 through 60 above and incorporates those allegations herein by reference.

2 62. RCW § 19.86.090 establishes a private action for “[a]ny person who is
3 injured in his or her business or property by a violation of,” among other statutes,
4 Washington’s Consumer Protection Act, RCW 19.86.020. The Washington
5 Consumer Protection Act makes unlawful “[u]nfair methods of competition and
6 unfair or deceptive acts or practices in the conduct of any trade or commerce.” RCW
7 § 19.86.020.

8 63. As a separate and distinct cause of action and ground for relief,
9 MaryRuth’s alleges that Doctor Danielle, by infringing the MaryRuth’s Mark and
10 MaryRuth’s Trade Dress, has caused a likelihood of confusion, deception, or mistake
11 as to the affiliation, connection, or association of Doctor Danielle with MaryRuth’s,
12 or as to the origin, sponsorship, or approval of goods or services offered by Doctor
13 Danielle or by MaryRuth’s. These acts and business practices constitute a common
14 course of unfair competition by means of unfair or deceptive practices in the conduct
15 of any trade or commerce, in violation of the Washington Consumer Protection Act,
16 RCW § 19.86.020.

17 64. Doctor Danielle’s conduct has directly and proximately caused and will
18 continue to cause MaryRuth’s substantial and irreparable injury, including customer
19 confusion, injury to its reputation, lost sales, lost goodwill, and diminution in the
20 value of its intellectual property, and unless restrained, will continue to seriously and

1 irreparably impair further the value of MaryRuth's intellectual property, for which
2 there is no adequate remedy at law.

3 65. MaryRuth's is entitled to an injunction restraining Doctor Danielle
4 from engaging in further such unlawful conduct, as well as its actual damages,
5 enhanced damages, costs of suit, and reasonable attorney's fees.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, MaryRuth's prays for the following relief against Doctor
8 Danielle:

9 A. Dismissing Doctor Danielle's Complaint and claim with prejudice,

10 B. Permanently enjoining and restraining Doctor Danielle and its
11 principals, officers, directors, shareholders, partners, agents, servants, employees,
12 parents, subsidiaries, and affiliates, and all persons acting in active concert or
13 participation with any of them, from:

14 1. Using the Infringing Logo and Infringing Trade Dress, or any
15 other mark or appearance confusingly similar to the MaryRuth's
16 Mark and MaryRuth's Trade Dress; and

17 2. Representing by any means whatsoever, directly or indirectly, a
18 connection, sponsorship, or affiliation between Doctor Danielle
19 and MaryRuth's or doing any other acts or things calculated or
20 likely to cause confusion, mistake, or deception among members

1 of the public or members of the trade as to the source,
2 sponsorship, affiliation, or approval of Doctor Danielle's goods
3 or services;

4 C. Directing that Doctor Danielle, at its own expense, recall and destroy
5 all labels, marketing, promotional, and advertising materials, and edit all websites
6 and social media presences or postings, that bear or incorporate the Infringing Mark
7 or Infringing Trade Dress;

8 D. Directing that, immediately after issuance of the Court's order, Doctor
9 Danielle deliver to MaryRuth's attorneys or representatives an affidavit testifying
10 that all labels, signs, prints, packages, molds, plates, dies, wrappers, receptacles,
11 advertisements, documents, electronic media, or any other thing in its possession or
12 under its control bearing the Infringing Logo or Infringing Trade Dress have been
13 destroyed or modified such that it is no longer calculated or likely to cause confusion,
14 mistake, or deception among members of the public or members of the trade as to
15 the source, sponsorship, affiliation, or approval of Doctor Danielle's goods or
16 services;

17 E. Directing Doctor Danielle to file with this Court and to serve upon
18 MaryRuth's, within thirty (30) days after issuance of an injunction in this action, a
19 written report, under oath, setting forth in detail the manner in which Doctor Danielle
20 has complied with the injunction;

1 F. Awarding MaryRuth's as damages Doctor Danielle's profits generated
2 in connection with its use of the Infringing Logo or Infringing Trade Dress;

3 G. Awarding MaryRuth's its actual damages and other damages as proven
4 in this case;

5 H. Awarding MaryRuth's enhanced damages as permitted by law;

6 I. Awarding MaryRuth's its reasonable attorneys' fees and costs incurred
7 in this action as permitted by law; and

8 J. Awarding MaryRuth's such other and further relief as this Court deems
9 just and proper.

10
11 **JURY DEMAND**

12 MaryRuth's demands a trial by jury of all issues so triable pursuant to Rule
13 38 of the Federal Rules of Civil Procedure.

14 DATED this 19th day of January 2022.

15 Montgomery Scarp & Chait PLLC

16 s/ Michael Chait

17 Michael Chait, WSBA # 48842

18 17600 Vashon Hwy SW, Suite 105

19 Vashon, WA 98070

20 Tel. (206) 625-1801

21 Fax (206) 625-1807

mike@montgomeryscarp.com

Attorney for MaryRuth Organics, LLC and
MRO MaryRuth, LLC

CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this action. I am the assistant to an attorney with Montgomery Scarp & Chait PLLC, whose address is 17600 Vashon Hwy SW, Suite 105, Vashon, Washington, 98070.

I hereby certify that a true and complete copy of *DEFENDANT'S ANSWER TO COMPLAINT, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM PLAINTIFF'S COUNTERCLAIMS* has been filed with the United States District Court via the ECF system which gives automatic notification to the following interested parties:

Michael G. Atkins
Atkins Intellectual Property, PLLC
113 Cherry Street #18483
Seattle, WA 98104-2205

I declare under penalty under the laws of the United States of America and the State of Washington that the foregoing information is true and correct.

DATED this 19th day of January 2022 at Seattle, Washington.

s/ Laura Meier
Laura Meier, Paralegal

EXHIBIT A

Generated on: This page was generated by TSDR on 2022-01-13 15:28:49 EST

Mark:



US Serial Number: 90046370

Application Filing Date: Jul. 10, 2020

US Registration Number: 6376468

Registration Date: Jun. 08, 2021

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Jun. 08, 2021

Publication Date: Mar. 23, 2021

Mark Information

Mark Literal Elements: None

Standard Character Claim: No

Mark Drawing Type: 2 - AN ILLUSTRATION DRAWING WITHOUT ANY WORDS(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of a woman with beige skin outlined in black, blue eyes with black pupils and black eyebrows, smiling red lips outlined black with white teeth, and golden hair tied with a red ribbon outlined in black, wearing a blue collared shirt with a beige button, both outlined in black, in the foreground of a landscape with blue sky, white clouds, rolling green hills with green trees and a beige road, and a white and blue structure with red roof, brown doors, and two windows and a chimney, all encased in a circle with black lines resembling pencil strokes dispersed throughout.

Color Drawing: Yes

Color(s) Claimed: The color(s) blue, white, green, red, brown, beige, gold, and black is/are claimed as a feature of the mark.

Design Search Code(s): 01.15.06 - Fog; Clouds; Advertising, skywriting

02.03.22 - Women - head, portraiture or busts in profile; Portraiture of women in profile; Heads of women in profile; Busts of women in profile

02.03.24 - Women, stylized, including women depicted in caricature form

02.11.16 - Smiley faces; Faces, smiley

05.01.02 - Trees or bushes with a generally rounded shape, including deciduous trees; Maple tree

05.01.10 - Thicket; More than one tree or bush; thicket; group of trees

06.09.05 - Other cultivated areas

07.01.04 - Detached house

07.07.01 - Sliding doors; Garage doors; Doors

07.07.02 - Windows; Skylights

07.07.06 - Chimneys

09.01.04 - Ribbons, hair; Ribbons, giftwrap (gift wrap); Bows, decorative

09.03.06 - Tank tops; Sweatshirts; Shirts; Jerseys; Exercise clothes, sweatshirts; Camisoles

26.01.21 - Circles that are totally or partially shaded.

Related Properties Information

International Registration Number: 1557220

International Application(s) /Registration(s) Based on this Property: A0099893/1557220

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (..) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Lotions for face and body; body and hand creams; skin masks; eye cream; hand lotions; skin masks; hand, facial, and body scrubs; cosmetic preparations; skin and body topical lotions for cosmetic use; creams and oils for cosmetic use; non-medicated herbal body care products, namely, body oils, salves, and lip balms

International Class(es): 003 - Primary Class

U.S Class(es): 001, 004, 006, 050, 051, 052

Class Status: ACTIVE

Basis: 1(a)

First Use: Oct. 18, 2018

Use in Commerce: Oct. 18, 2018

For: Probiotic supplements; protein powder nutritional and dietary supplements; vitamins; multivitamin preparations; mineral supplements; enzyme dietary supplements; food supplements, namely, anti-oxidants; herbal supplements; gummy vitamins; vitamin drops; nutritional supplements in the form of capsules, tablets, caplets, powder, gummies, spray, and drops; nutritional supplements consisting primarily of iron, calcium, zinc, iodine, turmeric, elderberry, collagen, and omega fatty acids; nutraceuticals for use as a dietary supplement to promote digestion, appetite control, anti-inflammatory, bone health, metabolism, immune support, energy boost, hormone regulation, muscle and tissue repair, mood enhancement, heart health, relaxation, cell repair, deep sleep, stress relief, and gluten relief

International Class(es): 005 - Primary Class

U.S Class(es): 005, 006, 018, 044, 046, 051, 052

Class Status: ACTIVE

Basis: 1(a)

First Use: Oct. 18, 2018

Use in Commerce: Oct. 18, 2018

For: Olive oil made with organic ingredients for food

International Class(es): 029 - Primary Class

U.S Class(es): 046

Class Status: ACTIVE

Basis: 1(a)

First Use: Oct. 18, 2018

Use in Commerce: Oct. 18, 2018

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: MRO MARYRUTH, LLC

Owner Address: 1171 SOUTH ROBERTSON BLVD, #148
LOS ANGELES, CALIFORNIA UNITED STATES 90035

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Robyn S. Lederman

Docket Number: MORG0102TUS

Attorney Primary Email Address: trademarks@brookskushman.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Robyn S. Lederman
Name/Address: BROOKS KUSHMAN P.C.
 1000 TOWN CENTER, 22ND FLOOR
 SOUTHFIELD, MICHIGAN UNITED STATES 48075-1238

Phone: 248-358-4400

Fax: 248-358-3351

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Dec. 22, 2021	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Jun. 08, 2021	REGISTERED-PRINCIPAL REGISTER	
Mar. 23, 2021	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Mar. 23, 2021	PUBLISHED FOR OPPOSITION	
Mar. 03, 2021	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Feb. 18, 2021	APPROVED FOR PUB - PRINCIPAL REGISTER	
Feb. 12, 2021	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Feb. 11, 2021	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Feb. 11, 2021	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Feb. 10, 2021	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Feb. 10, 2021	NON-FINAL ACTION E-MAILED	6325
Feb. 10, 2021	NON-FINAL ACTION WRITTEN	94364
Dec. 28, 2020	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Dec. 26, 2020	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Dec. 26, 2020	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Oct. 20, 2020	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Oct. 20, 2020	NON-FINAL ACTION E-MAILED	6325
Oct. 20, 2020	NON-FINAL ACTION WRITTEN	94364
Oct. 15, 2020	ASSIGNED TO EXAMINER	94364
Aug. 07, 2020	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Aug. 06, 2020	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jul. 14, 2020	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Jun. 08, 2021

Assignment Abstract Of Title Information

Summary

Total Assignments: 1

Registrant: MaryRuth Organics, LLC

Assignment 1 of 1

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [7507/0512](#)

Pages: 5

Date Recorded: Dec. 10, 2021

Supporting Documents: [assignment-tm-7507-0512.pdf](#)

Assignor

Name: [MARYRUTH ORGANICS, LLC](#)

Execution Date: Sep. 28, 2021

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: CALIFORNIA

Assignee

Name: [MRO MARYRUTH, LLC](#)

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country: DELAWARE

Where Organized:

Address: 1171 SOUTH ROBERTSON BLVD, #148
LOS ANGELES, CALIFORNIA 90035

Correspondent

Correspondent Name: ROBYN S. LEDERMAN

Correspondent Address: 1000 TOWN CENTER, 22ND FLOOR
SOUTHFIELD, MI 48075-1238

Domestic Representative - Not Found